

§ 890.1060

5 CFR Ch. I (1–1–11 Edition)

§ 890.1060 Purpose and scope of civil monetary penalties and assessments.

(a) *Civil monetary penalty.* A civil monetary penalty is an amount that OPM may impose on a health care provider who commits one of the violations listed in § 890.1061. Penalties are intended to protect the integrity of FEHBP by deterring repeat violations by the same provider and by reducing the likelihood of future violations by other providers.

(b) *Assessment.* An assessment is an amount that OPM may impose on a provider, calculated by reference to the claims involved in the underlying violations. Assessments are intended to recognize monetary losses, costs, and damages sustained by OPM as the result of a provider's violations.

(c) *Definitions.* In §§ 890.1060 through 890.1072:

Penalty means civil monetary penalty; and

Penalties and assessments may connote the singular or plural forms of either of those terms, and may represent either the conjunctive or disjunctive sense.

(d) *Relationship to debarment and suspension.* In addition to imposing penalties and assessments, OPM may concurrently debar or suspend a provider from participating in the FEHBP on the basis of the same violations.

(e) *Relationship to other penalties provided by law.* The penalties, assessments, debarment, and suspension imposed by OPM are in addition to any other penalties that may be prescribed by law or regulation administered by an agency of the Federal Government or any State.

§ 890.1061 Bases for penalties and assessments.

(a) *Improper claims.* OPM may impose penalties and assessments on a provider if a claim presented by that provider for payment from FEHBP funds meets the criteria set forth in 5 U.S.C. 8902a(d)(1).

(b) *False or misleading statements.* OPM may impose penalties and assessments on a provider who makes a false statement or misrepresentation as set forth in 5 U.S.C. 8902a(d)(2).

(c) *Failing to provide claims-related information.* OPM may impose penalties

and assessments on a provider who knowingly fails to provide claims-related information as otherwise required by law.

§ 890.1062 Deciding whether to impose penalties and assessments.

(a) *Authority of debarring official.* The debarring official has discretionary authority to impose penalties and assessments in accordance with 5 U.S.C. 8902a and this subpart.

(b) *Factors to be considered.* In deciding whether to impose penalties and assessments against a provider that has committed one of the violations identified in § 890.1061, OPM must consider:

(1) The number and frequency of the provider's violations;

(2) The period of time over which the violations were committed;

(3) The provider's culpability for the specific conduct underlying the violations;

(4) The nature of any claims involved in the violations and the circumstances under which the claims were presented to FEHBP carriers;

(5) The provider's history of prior offenses or improper conduct, including any actions that could have constituted a basis for a suspension, debarment, penalty, or assessment by any Federal or State agency, whether or not any sanction was actually imposed;

(6) The monetary amount of any damages, losses, and costs, as described in § 890.1064(c), attributable to the provider's violations; and

(7) Such other factors as justice may require.

(c) *Additional factors when penalty or assessment is based on provisions of § 890.1061(b) or (c).* In the case of violations involving false or misleading statements or the failure to provide claims-related information, OPM must also consider:

(1) The nature and circumstances of the provider's failure to properly report information; and

(2) The materiality and significance of the false statements or misrepresentations the provider made or caused to be made, or the information that the provider knowingly did not report.